Supreme Court, U. S.
FILED
JUN 8 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.
Appellee.

On Appeal from the Supreme Court of the State of Utah

MOTION TO DISMISS

D. Gary Christian
Kipp and Christian
520 Boston Building
Salt Lake City, Utah 84111
Counsel for Appellee

TABLE OF CONTENTS

Page

OPINION BELOW 1

FACTS 2

POINT I

APPELLANT LACKS STANDING TO ASSERT THE UNCONSTITUTIONALITY OF SECTION 15-2-1, UTAH CODE ANNOTATED, 1953 3

POINT II

A DETERMINATION THAT SECTION 15-2-1 IS UNCONSTITUTIONAL WOULD NECESSARILY INVOLVE THE COURT IN ISSUES WHICH ARE ESSENTIALLY NONJUSTICIABLE UNDER THE POLITICAL QUESTION DOCTRINE 6

POINT III

THE JUDGMENT RESTS ON AN ADEQUATE NONFEDERAL BASIS 7

CONCLUSION 8

APPENDIX 1a

CASES CITED

Aetna Life Insurance Company v. Hayworth,
300 U.S. 227, 240, 81 L.Ed. 617, 621, 57 S.Ct. 461 (1937) 5

Baker v. Carr, 369 U.S. 186 (1962) 6

Barrows v. Jackson,
346 U.S. 249, 97 L.Ed. 1586, 1595 (1952) 4

Flast v. Cohen,
392 U.S. 83, 102, 20 L. Ed. 2d 947, 963 .....4, 5

Stanton v. Stanton,
30 Utah 2d ....., 517 P.2d 1010 (1974) 1, 7

TABLE OF CONTENTS (Continued)

Page

STATUTES CITED

Rule 16(b), Supreme Court Rules 8
Section 15-2-1, Utah Code Annotated (1953) ..3, 4, 5, 6, 8
Section 78-45-1, Utah Code Annotated (1953) 5

CONSTITUTIONAL PROVISIONS

Amendment XIV, United States Constitution 6

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1461

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.
Appellee.

On Appeal from the Supreme Court of the State of Utah

MOTION TO DISMISS

OPINION BELOW

The opinion of the Utah Supreme Court in this matter appears in 517 P.2d 1010 (1974) and in the as yet unpublished Volume 30 of the Utah Reports (2d). It is set forth in the Appendix of this Motion at pages 1a through 7a.

FACTS

This case arises from a Decree of Divorce entered November 29, 1960 in the District Court of Salt Lake County, State of Utah, which awarded to appellant the care and custody of the minor children, Sherri Lyn and Rick Arlund and which ordered appellee to pay appellant One Hundred Dollars ($100.00) per month per child as child support. On February 22, 1971, Sherri Lyn attained the age of eighteen whereupon appellee discontinued payments for her support.

On May 22, 1973 appellant filed a Motion for Judgment seeking recovery of the alleged delinquencies from February 22, 1971. The district court denied this Motion giving as its reason the following statement from the Amended Findings of Fact and Conclusions of law:

> 1. On February 12, 1971, Sherri Lyn Stanton, one of the children of the parties became 18 years of age, and under the provisions of 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date.
>
> . . .

Section 15-2-1 which formed the basis of the decision reads as follows:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

Appeal from this decision was taken to the Utah State Supreme Court on January 4, 1974, where the judgment of the lower court was affirmed. The decision was based

upon a general theory of judicial restraint. Noting that various reasons could be advanced for the adoption of a statute which distinguishes between men and women in the eighteen to twenty-one age group the court stated:

> But we do not regard it as our judicial function to pass upon the soundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack.

The court also advanced the closely related reason that full determination of the question of constitutionality of the statute would require a decision by the court as to what the uniform age of majority should be. As to this question the court stated:

> We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.

Appellant filed Notice of Appeal from the decision to this court. The purpose of this Motion is to seek dismissal of that appeal.

POINT I

APPELLANT LACKS STANDING TO ASSERT THE UNCONSTITUTIONALITY OF SECTION 15-2-1, UTAH CODE ANNOTATED, 1953

The Decree of Divorce which severed the matrimonial bonds of appellant and appellee in 1960 provided that

. . .

> 2. Plaintiff [appellant] is awarded care and custody of the two *minor* children.
> . . . [Emphasis added.]

and

> 5. Defendant is ordered to pay to plaintiff the sum of . . . $100.00 per month for each child as child support. . . .

Section 15-2-1, Utah Code Annotated, 1953 provides:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years. . . .

The trial court found that this provision eliminated any of Mr. Stanton's obligations for payment of support to his eighteen-year-old daughter. The Utah Supreme Court upheld this decision. No determination was made that appellant was obligated to continue to provide support for her daughter. Nonetheless, appellant contends that she is harmed by the court's determination. However, it is manifest that she has no standing to challenge the constitutionality of Section 15-2-1.

It is a well-established rule of this court that only individuals whose interests have been prejudiced or who will suffer direct substantial injury as a result of application of a statute may attack its constitutionality. *Barrows* v. *Jackson,* 346 U.S. 249, 97 L.Ed. 1586, 1595 (1952). This court has also stated that where a legislative enactment is being attacked a logical link between the status of the challenger and the statute must be established. *Flast* v. *Cohen,* 392 U.S. 83, 102, 20 L. Ed. 2d 947, 963.

In this case appellant can demonstrate neither a substantial injury nor the requisite nexus between her status and Section 15-2-1. Appellant is not a minor who alleges that she should be treated as an adult, or an adult who contends she should be given the protection afforded minors. Rather, appellant contends that she is harmed because her husband refuses to continue making support payments for their eighteen-year-old daughter. Such a position would have merit if appellant were the daughter whose payments were discontinued. However, as the mother, appellant receives no benefits from the support payments; she is merely the conduit who in effect passes such payments along to her daughter.

It is unclear from her Jurisdictional Statement whether appellant contends that she is obligated under other Utah statutes to continue supporting her daughter until she attains the age of twenty-one. (E.g., *Uniform Civil Liability for Support Act,* Section 78-45-1, et seq., Utah Code Annotated, 1953, 1973 pocket supplement.) The divorce decree which awards "*care* and custody of the *minor* children" to appellant certainly appears to dictate a contrary conclusion. But whatever the merits of such a contention, such liability is at present purely speculative and as such is of such "a hypothetical or abstract character" as to deprive appellant of standing. *Aetna Life Insurance Company* v. *Haworth,* 300 U.S. 227, 240, 81 L.Ed. 617, 621, 57 S.Ct. 461 (1937); *Flast* v. *Cohen, supra* at 100.

In view of appellant's lack of standing, the appeal should be dismissed.

POINT II

A DETERMINATION THAT SECTION 15-2-1 IS UNCONSTITUTIONAL WOULD NECESSARILY INVOLVE THE COURT IN ISSUES WHICH ARE ESSENTIALLY NONJUSTICIABLE UNDER THE POLITICAL QUESTION DOCTRINE

Section 15-2-1 sets the age of majority at twenty-one years for men and eighteen years for women. Appellant attacks this statute as violating the Equal Protection Clause of the Fourteenth Amendment. A finding that the statute is unconstitutional would necessitate a further finding that the age of majority be lowered to eighteen in men or raised to twenty-one for women. Such a determination would fall squarely within the "political question" doctrine.

In *Baker* v. *Carr*, 369 U.S. 186 (1962) this court examined the doctrine of nonjusticiability where political questions were concerned. The decision provides the following lists of factual situations involving political questions:

> . . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherance to a political decision already made; or the potentiality of embarrassment from mcltifarious pronouncements by various departments on one question. 369 U.S. at 217.

As defined above the setting of the age of majority is clearly a political question. There are, for example, no "judicially discoverable and manageable standards" for resolving the question of whether the age for men should be lowered or the age for women raised. Similarly, any determination that a particular age should be adopted, or that the present distinction is without rational basis requires a "determination of a kind clearly for nonjudicial discretion."

Indeed, the Utah Supreme Court recognized the political nature of the issue posed when it stated:

> We think this case and the proposal under consideration provides a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature. 517 P.2d 1010, 1013.

Thus, without actually denominating it as such the court below applied the "political question" doctrine in upholding the constitutionality of the statute. For the same reason this court should dismiss appellant's appeal.

POINT III

THE JUDGMENT RESTS ON AN ADEQUATE NONFEDERAL BASIS

A careful reading of the Utah Supreme Court's decision on appeal makes it clear that the court did not attempt to decide the case according to whether or not the statute is constitutional. Rather, the court held that the reasons underlying the adoption of the statute are essentially political in nature, and thus, beyond the ken of the

courts. The decision also notes that in the event the court were to invalidate the statute, it would be faced with the task of determining what the age of majority would be. The decision notes that such a determination is a political one for the legislature rather than the courts.

Thus, the decision rests upon a nonfederal basis namely, that the issue presented was a political question. Accordingly, appellant's appeal should be dismissed as provided in Rule 16(b), Supreme Court Rules.

CONCLUSION

Appellant's appeal should be dismissed and/or the judgment below affirmed for three reasons: First, appellant lacks standing to challenge Section 15-2-1, second, the issues presented by the appeal involve political questions which should be left to the legislative branch for determination, and third, the decision of the Utah State Supreme Court was arrived at on a nonfederal basis.

Any one of the reasons is sufficient to warrant this court's dismissal of the appeal.

Respectfully submitted,

D. GARY CHRISTIAN of
KIPP AND CHRISTIAN

APPENDIX

IN THE SUPREME COURT OF THE STATE OF UTAH

Thelma B. Stanton,
Plaintiff and Appellant,

v.

James Lawrence Stanton, Jr.,
Defendant and Respondent.

No. 13362

FILED
January 4, 1974

L. M. Cummings, Clerk

CROCKETT, Justice:

The main issue presented on this appeal is plaintiff's attack on the constitutionality of Section 15-2-1, U.C.A. 1953:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years, but all minors obtain their majority by marriage.

She contends that making the age of majority lower for women than for men is discriminatory, and denies equal protection of the laws.[1]

After nine years of marriage, and the birth of two children, Sherri, born February 12, 1953, and Rick, born January 29, 1955, the parties were divorced and the decree required the defendant to pay $100 per month alimony and $100 per month for the support of each child. It is not disputed that he made these payments until February 1971, at which time he ceased paying for Sherri because she had reached the age of 18. In supplemental proceedings the plaintiff sought judgment for support payments

[1] Utah constitution, Art. I, Secs. 7 and 24; and Art. IV, Sec. 1; and also U.S. Constitution, Amend. XIV.

for Sherri accruing since that time. From an adverse ruling, she appeals. The trial court ruled in accordance with the assumption since time immemorial in our law that our statutes dealing with the support of "children" meant during the period of minority,[2] and denied her petition. She appeals.

In considering plaintiff's charge that the statute just quoted is unconstitutional there are some general principles to be applied. Due to the important concept of separation of powers in our government, the courts should defer to the prerogative of the legislature to make the laws, and confine their own actions to interpreting and applying them. This, of course, does not negate their responsibility of determining an act to be invalid if there is a clear and irreconcilable conflict between it and the Constitution, which is the supreme and controlling law.[3] But the courts are in a peculiar and somewhat delicate position because it falls to their lot to decide whether such conflict exists, and there is always the danger of trespassing upon the legislative prerogative. For the reason, and in order to maintain and safeguard the balance of power so essential to our system of government, we think it is correct and desirable to adhere to a policy of caution and restraint in respect for the prerogatives of the legislature; and not strike down a statute unless it appears so clear that it is beyond a reasonable doubt that there is such irreconcilable conflict,[4] to the end that the legislature is permitted

[2] See Secs. 30-3-5, U.C.A. 1953, support and custody of children in divorce cases; 30-2-10, cases of abandonment; 30-3-10, cases of separation; and 30-4-3, separate maintenance.

[3] See Allen v. Rampton, 23 Utah 2d 336, 463 P.2d 7, and authorities therein cited.

[4] Newcomb v. Ogden City Pub. School Teachers' Retirement Commission, 121 Utah 503, 243 P.2d 941 (1952).

to perform its intended function of making the laws, and the courts theirs, of interpreting and applying them.

It is also worthy of mention that this should be more true as to acts of a state legislature, which acts as representatives of a sovereign state, an thus has inherently all of the powers of sovereignty, except as otherwise specified or limited by the state constitution, as contrasted to the federal government which has only those powers expressly granted, with all others reserved to the people. See the language of Amendments IX and X, U.S. Constitution.

There is no doubt that the questioned statute treats men and women differently. But there is likewise no question but it may treat people differently, based on classification, so long as there is a reasonable basis for the classification, which is related to the purpose of the act, and it applies equally and uniformly to all persons within the class.[5] The plaintiff's argument is that, notwithstanding the foregoing, there is no sound reason for differentiation between the sexes as to the termination of the right of support. She asserts that whatever basis there may have been in former days for continuing the support of boys for the extra three years, because of the liberalization process in which women have become more involved in all affairs of the world outside the home, that basis no longer exists.

We are aware that both society in general and interfamily relationships have been undergoing change, as they undoubtedly should. We do not desire to be understood as opposing change simply because it is different; and we

[5] State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330; Slater v. Salt Lake City, 115 Utah 476, 206 P.2d 153, 9 A.L.R. 2d 712.

wholly agree that an essential aspect of the vitality of the law is that it should change to meet changing conditions. But neither of those propositions provide the answer to the problem here.

It may be that our ancestors for generations before us have been misguided in their belief that there are some fundamental differences between the sexes. But it is remarkable how some of those old notions do continue to prevail as to numerous interesting differences. Included among them is the belief held by many that generally it is the man's primary responsibility to provide a home and its essentials for the family; and that however many exceptions and whatever necessary and proper variations therefrom may exist in differing circumstances, it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities.

Perhaps more important than this, there is another widely accepted idea: that girls tend generally to mature physically, emotionally and mentally before boys, and that they generally tend to marry earlier.[6] We realize that as a court made up of men, there is a possibility of masculine bias, which we should endeavor to guard against in considering matters of this character. But we do not regard it as our judicial function to pass upon the soundness or the unsoundness of the ideas just mentioned above. What we do note is our knowledge of their existence; and that they have played an essential role in the history of the development of the law as declared in the statute under attack.

---

[6] See a good statement on this by Justice Dailey in Jacobson v. Lenhart, 30 Ill. 2d 225, 195 N.E. 2d 638.

Should it be deemed the prerogative of the court to initiate a change in the age at which the parental duty of support terminates, it would be appropriate to reflect upon another aspect of the problem: that is, how would the shoe fit on the other foot? Assume that we would take judicial cognizance of the trend in the differing role of women, perhaps we should similarly notice the trend toward the earlier emancipation and further freedom of conduct of minors; and that this applies to both boys and girls. One indication of this is the recent reduction of the age for voting to 18.[7] From this it could be argued with equal logic that instead of extending the defendant's duty of supporting Sherri to 21, he should be relieved of the duty of supporting the son Rick (age 16) when he reaches 18. Thus in a contest between the plaintiff and the defendant as to the support of these children, there would be a net loss to the plaintiff.

On the basis of what has been said above we make these observations: that there are various factors which should be considered in formulating the policy of the law as to when the duty to support children should terminate; that the opposing contentions with respect to the merits of plaintiff's proposal are matters upon which reasonable minds might entertain different opinions; that due to those facts, combined with the long existence and application of this statute in harmony with our constitutional provisions, it is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitu-

---

[7] See Sec. 20-2-11.1, U.C.A. 1953; and Federal Voting Rights Act Amendments of 1970, Public Law 91-285.

tional provisions that it should be stricken down as invalid.

We think this case and the proposal under consideration provide a very good example of why the courts should not initiate a change in the law as advocated by the plaintiff. If such a change is desirable, that is a matter which should commend itself to the attention of the legislature.[8] Then the proposal would be subject to public scrutiny and debate, and action be taken thereon by the representatives of the people, rather than to have a change result from a controversy between private individuals. There is the further advantage that if such a change is made legislatively, everyone could know the time, the manner and the extent of the change; and the legislature in the exercise of its wisdom and prerogative, could also provide how the new law would affect the thousands of divorce decrees already entered and under which such problems might arise, including the possible ex post facto, current, and prospective effects.

There is an adjunctive minor issue in this case: defendant contends that the son Rick lived with him for about three months and that he is therefore entitled to a credit of $300 for Rick's support during that time. The general rule is that the decree fixes the obligations of the parties; and that they cannot modify it or change their obligations by their conduct.[9] Otherwise sometimes interfamily tensions and machinations could make a shambles

[8] That majority or minority is a status and that is the prerogative of the legislature to fix and change the age of majority, see in re Morrissey, 137 U.S. 157; and Springstun v. Springstun, 131 Wash. 109, 229 P. 14, 40 A.L.R. 595; 27 Am. Jur. 748, Sec. 5.

[9] See Harris v. Harris, 14 Utah 2d 96, 377 P.2d 1007, Marks v. Marks, 98 Utah 400, 100 P.2d 207.

of determining and enforcing the rights and duties of the parties.

In the absence of any modification of the decree, the support money accrued in accordance with its terms; and it was not the prerogative of the defendant to unilaterally decide that he would not pay the support money and offset it by favors conferred upon the children. However, in matters concerning the custody and support of children, because of their highly equitable nature, it is appropriate for the trial court to take into consideration the entire circumstances in making any order of enforcement of the decree, by contempt or otherwise, having in mind his equitable powers, to make any adjustment he may think fair and justified.

Nevertheless, upon the basis of the decree, and the record before us, the plaintiff is entitled to judgment for the $300 accrued support money for the son Rick, and to a continuance thereof during his minority unless otherwise properly determined and ordered by the district court. Except as to this last item, the judgment is affirmed. The parties to bear their own costs.

WE CONCUR:

E. R. Callister, Jr.,
Chief Justice

R. L. Tuckett,
Justice

F. Henri Henriod,
Justice

Joseph E. Nelson,
District Judge

A. H. Ellett, Justice, having disqualified himself, does not participate herein.